
Table of Contents

CHAPTER 1: The Nature of the Contempt Power 1

- 1.1 Definition of “Contempt of Court” 1
- 1.2 Purposes of the Contempt Power 1
- 1.3 Courts Must Exercise Contempt Power With Restraint 2
- 1.4 Inherent Authority of Courts to Exercise Contempt Power 2
 - A. Statutory Provisions Illustrating Use of Courts’ Contempt Powers 3
 - B. Courts Limited by Penalty Provisions in Statutes 5
- 1.5 Statutory Provisions Assigning Contempt Powers to Particular Courts 5
- 1.6 Contempt Powers of Quasi-Judicial Officers 5
 - A. Magistrates 6
 - B. Referees 6
 - C. Administrative Hearing Officers 6
- 1.7 Jurisdiction of Contempt Proceedings 7

CHAPTER 2: Types of Contempt of Court 9

- 2.1 Distinguishing Civil and Criminal Contempt 9
 - A. In re Contempt of Dougherty 10
 - B. Contemnor Must Be in Present Violation of the Court’s Order for Coercive Remedy to Be Imposed 11
 - C. Anticipatory Contempt 11
- 2.2 Comparing Civil and Criminal Contempt Proceedings 12
 - A. Purpose for Imposing Sanctions 12
 - B. Types of Sanctions That May Be Imposed 12
 - C. Intent of the Contemnor 13
 - D. Standard of Proof 14
 - E. Primary Interested Party 14
 - F. Court’s Ability to Restore the Status Quo Ante 15
 - G. Contemnor’s Ability to Purge the Contempt 15
- 2.3 **Table 1: Comparison of Civil and Criminal Contempt of Court 16**

-
- 2.4 Direct Contempt (“Summary Contempt Proceedings”) 17
 - A. “Immediate View and Presence” 17
 - B. “During Its Sitting” 18
 - 2.5 Indirect Contempt 18
 - 2.6 Summary: Elements of Contempt of Court 18
 - A. Direct Criminal Contempt 18
 - B. Direct Civil Contempt 19
 - C. Indirect Criminal Contempt 19
 - D. Indirect Civil Contempt 19

CHAPTER 3: Procedural Requirements 21

- 3.1 Threshold Determinations 21
 - A. Informing Alleged Contemnor of the Nature of the Proceedings 21
 - B. Determining Whether a Hearing Is Required 22
- 3.2 Procedural Due Process Requirements 22
 - A. General Requirements for All Cases of Indirect Contempt 22
 - B. Procedural Requirements That Differ Depending Upon Whether Proceeding Is Civil or Criminal 23
- 3.3 Summary Contempt Proceedings 23
- 3.4 Deferred Proceedings 24
- 3.5 Indirect Contempt 24
- 3.6 Prosecution of Action 25
 - A. Proceedings Governed by Statute or Court Rule 25
 - B. Criminal Contempt Proceedings 26
 - C. Civil Contempt Proceedings 26
- 3.7 Right to Counsel for Alleged Contemnor 26
- 3.8 Initiation of Proceedings by Affidavit or Other Method 26
 - A. Initiation by Affidavit 27
 - B. “Other Method” of Initiating Proceedings 27
 - C. Waiver of Notice 28
- 3.9 Requirements for Affidavits 28
 - A. Affidavits Must Be Based on Personal Knowledge 28
 - B. Notice Requirements 28
 - C. Proof of Damages 28
 - D. Service of Motion and Affidavit on Alleged Contemnor 28
- 3.10 Requirements for Orders to Show Cause 29
- 3.11 Requirements for Bench Warrants 29
- 3.12 Writs of Habeas Corpus for Prisoners Charged With Contempt 30
- 3.13 Bond in Lieu of Arrest 30
- 3.14 Disqualification of Judge 31

-
- A. Direct Contempt Proceedings 31
 - B. Indirect Contempt Cases 32
 - C. Cases Involving Publication of Comments Concerning Court or Judge 32
 - 3.15 Right to Jury Trial Restricted to “Serious Criminal Contempt” 32
 - 3.16 Applicability of Rules of Evidence 32

CHAPTER 4: Sanctions for Contempt of Court 33

- 4.1 Statutory Provisions for Sanctions in Contempt Cases 33
- 4.2 Jail Terms and Fines 34
 - A. For Civil Contempt 34
 - B. For Criminal Contempt 35
 - C. Termination of Incarceration in Cases of Civil Contempt 35
 - D. Suspension of Fines in Cases of Civil Contempt 35
 - E. Excessive “Civil” Fines 35
 - F. Cumulative Punishment 36
 - G. Fines and Alternative Jail Sentences in Criminal Contempt Cases 36
- 4.3 Mandatory Compensatory Sanctions 36
 - A. Determining the Amount of Loss or Injury 37
 - B. Per Diem Damages 37
 - C. Damages and Conditional Jail Sentences in Civil Contempt Cases 37
 - D. Costs of Court Proceedings 37
 - E. Attorney Fees 38
- 4.4 Statutory Exceptions to the General Penalty Provisions of the Revised Judicature Act 38
 - A. Failure of Witness to Obey Subpoena or Discovery Order 38
 - B. Failure of Grand Jury Witness to Testify 39
 - C. Failure to Pay Child or Spousal Support 39
 - D. Failure to Comply With Parenting Time Order in Divorce Judgment 39
 - E. Failure to Abate Public Nuisance 39
- 4.5 Assignment of Bond for Recovery of Damages 39
- 4.6 Requirements for Court’s Opinion and Order 40
- 4.7 Appeals of Contempt Orders 40
 - A. Appeals to Circuit Court and Court of Appeals 40
 - B. Standard of Review 41
 - C. Waiver of Irregularities in Initiating Proceedings 41
- 4.8 Double Jeopardy 42

CHAPTER 5: Common Forms of Contempt of Court 43

- 5.1 Introduction 45
- 5.2 Attorney's Misconduct in Courtroom 45
 - A. Statute 45
 - B. Zealous Representation or Contumacious Conduct? 45
 - C. Excusing the Jury 46
- 5.3 Attorney's Failure to Appear in Court 46
 - A. Statute 46
 - B. Attorney's Duty as Officer of Court 47
 - C. Indirect Contempt 47
 - D. Requirements for Finding Criminal Contempt 47
- 5.4 Failure of Witness to Attend Court After Being Served With a Subpoena 48
 - A. Statute and Court Rule 48
 - B. Indirect Contempt 49
- 5.5 Juror Misconduct 49
- 5.6 Violation of Court Orders 50
 - A. Statute 50
 - B. Civil or Criminal Contempt Proceedings 50
 - C. Even Clearly Incorrect Orders Must Be Obeyed 51
 - D. Reliance on Attorney's Advice 51
 - E. Injunctions 51
- 5.7 Violation of Court Order Regarding Nuisance 52
 - A. Statute 52
 - B. Criminal Contempt 52
- 5.8 Failure to Pay Money Judgment 53
 - A. Statute 53
 - B. Rationale for Limitation on Use of Contempt Power to Enforce Money Judgments 53
 - C. Exception: Specific Fund or Article 53
 - D. Exception: Duty to Pay Arising From a Fiduciary Relationship 54
 - E. Exception: Child or Spousal Support 54
- 5.9 Failure to Pay Child or Spousal Support 55
 - A. Statutes 55
 - B. Right to Counsel 56
 - C. Ability to Pay Support Arrearage and Sanctions 56
 - D. Determining Ability to Pay 58
 - E. Statutory Presumption of Ability to Pay 58
 - F. Civil or Criminal Contempt Proceedings 59
 - G. Waiver of Contempt and Hearing on Modification of Support Order 59
- 5.10 Violation of Parenting Time Orders in Divorce Judgments 60
 - A. Statute 60

-
- B. Civil or Criminal Contempt Proceedings 61
 - 5.11 Violations of Personal Protection Orders (PPOs) 61
 - 5.12 Criminal Defendant's Disruptive Behavior in Court 62
 - A. Statute 62
 - B. Constitutional Right to Be Present at Trial 62
 - C. Constitutionally Permissible Solutions 63
 - 5.13 Witness's Refusal to Testify 64
 - A. Statutes and Court Rule 64
 - B. Fifth Amendment Privilege Against Self-Incrimination 64
 - C. Use of Summary Contempt Proceedings 65
 - D. Civil Sanctions 65
 - E. Excusing the Jury 65
 - 5.14 Grand Jury Witness's Refusal to Testify 65
 - A. Statute 65
 - B. Civil Contempt Proceedings 66
 - C. Sanctions for Repeated Refusal to Testify 66
 - 5.15 Filing of False Pleadings and Documents 67
 - A. Statute and Court Rule 67
 - B. Indirect Contempt 67
 - C. False or Evasive Testimony or Pleading 68
 - 5.16 Parties and Attorneys in Civil Cases Who Violate Discovery Orders 68
 - A. Statute and Court Rules 68
 - B. Attorneys 69
 - C. Refusal to Submit to Paternity Test 69
 - 5.17 Criticisms of the Court 69
 - A. Statute 69
 - B. Freedom of Speech 70
 - C. Test to Determine Whether Criticism Is Contumacious 70
 - 5.18 Obstructing Judicial Process or Service 71
 - 5.19 Improper Attempts to Affect Witness Testimony 71
 - A. Statute 71
 - B. Interference With Witness 71
 - C. Bribery 72
 - 5.20 Improper Attempts to Affect Jurors and Potential Jurors 72
 - A. Statute 72
 - B. Site of Contact With Jurors Irrelevant 72
 - C. Prejudice to a Party Unnecessary 72
 - 5.21 Fiduciaries Who Violate Court Orders 73
 - A. Statute 73
 - B. Failure to Comply With Court Order 73
 - 5.22 Contempt of Court Under the Juvenile Code 73

-
- A. Statutes and Court Rule 73
 - B. Common Uses of Contempt Power in Juvenile and Child Protective Proceedings 74
 - C. Enforcement of Personal Protection Orders (PPOs) Against Juveniles 75
 - D. Jurisdiction 75
 - E. Authority to Punish Juvenile for Contempt Committed in Proceedings Not Under the Juvenile Code 75

5.23 Table 2: Procedures and Sanctions for Common Forms of Contempt 76

Checklists & Indexes

Checklist 1: Summary Punishment of Direct Contempt of Court 82

Checklist 2: Conducting Civil Contempt Proceedings 83

Checklist 3: Conducting Criminal Contempt Proceedings 85

Subject Matter Index 87

Case Index 91

Index of Statutes, Rules, and Administrative Orders 97